IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.69 OF 2006

IN

SUIT NO.3303 OF 2005

...

UCO Bank ...Plaintiff

v/s.

Ashok Mahajan ...Defendant

...

Mr.V.S.Khanavka for the Plaintiff.

Mr.V.B. Ghorpade for the Defendant.

...

CORAM: D.K.DESHMUKH, J.

DATED: 18TH JULY, 2006

P.C.:

1. The Bank has filed this suit for recovery of amount that was given on the basis of written contract of guarantee. The guarantee should have been enforced if the principal borrower commits default. The principal borrower committed default in payment of instalment. Therefore, by letter dated 28-1-2003 a guarantee was invoked and the amount was demanded. The amount was not paid. Therefore, the Plaintiff has filed this suit.

2. First defence raised by the Defendant is that the suit is barred by the law of limitation, because the demand was made in the year 2002. Perusal of the letter on which the reliance placed by the Defendant shows that by that letter the Defendant was notified that the principal borrower has committed default in payment of the monthly instalment. The guarantee was invoked by the Plaintiff first time by letter dated 28-1-2003 and the present suit has been filed on 17-10-2005 and therefore the suit is perfectly within limitation.

3. Then it was urged that because the Bank has attached some of the properties of the principal borrower, under Order XXXVII of the CPC the suit is not maintainable. Once it is not disputed that the principal borrower has committed default and the liability of the guarantor is several, it cannot be said that the suit for recovery of the guaranteed amount is not maintainable against the Defendant. The defences raised on behalf of the Defendant thus have no substance. They are moon shine defences. The summons for judgment is, therefore, granted. The Defendant is not entitled to any leave to defend. The suit of the Plaintiff is decreed in terms of prayer clause (a). Refund of court fees as per rules.

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